

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES MARK HINKLEY,

Plaintiff,

v.

RON KNIGHT, LYNN CLARK, ROD  
SHUMATE, KIRK JESSEE, C/O  
"UNKNOWN" LIND, "UNKNOWN" SHATTO,  
"UNKNOWN" TURNER, "UNKNOWN" RUIZ  
and "UNKNOWN INDIVIDUALS,"

Defendants.

NO: CV-13-5047-EFS

**ORDER DENYING MOTIONS AND STRIKING  
NON-PARTY SUBMISSIONS**

Before the Court are Plaintiff's Motion to Appoint Legal Counsel, ECF No. 4; a document construed as a Motion for Preliminary Injunction/TRO, ECF No. 5; a letter construed as a Motion to Strike the Motion for Preliminary Injunction/TRO and the initial complaint, ECF No. 8; a proposed amended complaint, ECF No. 9; a Motion for Temporary Restraining Order, ECF No. 10; and a letter and declaration of a "non-party," ECF No. 12. Plaintiff is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Plaintiff's Motions and documents were considered without oral argument on the date signed below.

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**MOTION FOR APPOINTMENT OF COUNSEL**

Plaintiff requests the appointment of counsel. This court has discretion to designate counsel pursuant to 28 U.S.C. §1915(e)(1) only under exceptional circumstances. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Determining whether exceptional circumstances exist requires evaluating "the likelihood of success on the merits and plaintiff's ability to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Id.* (citation omitted).

By separate Order, the Court has advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. The Court has also denied Plaintiff's request for class certification. At this time, the record does not reflect exceptional circumstances warranting the designation of counsel. Accordingly, Plaintiff's motion is denied.

**MOTIONS FOR INJUNCTIVE RELIEF AND TO WITHDRAW COMPLAINT**

On April 15, 2013, Plaintiff submitted a document titled, "Order to Show Cause for an [sic] Preliminary Injunction & a Temporary Restraining Order," which the Court liberally construes as a Motion for Preliminary Injunction/TRO, ECF. No. 5. On April 25, 2013, the Court received a proposed Amended Civil Rights Complaint, ECF No. 9, a proposed Motion for Preliminary Injunction and Temporary Restraining Order, ECF No. 10, and a letter in which Mr. Hinkley asks the District Court Executive to replace the original complaint with his amended one and the "Preliminar [sic] Injunction" with the one he enclosed. ECF No. 8. Because one document cannot simply be substituted for another, the Court liberally construed this letter as a Motion to Strike the prior documents, ECF

1 Nos. 1 and 5. For the reasons set forth below, this construed motion to  
2 strike is denied as moot.

3 The Court has no jurisdiction to address a motion for injunctive  
4 relief until the plaintiff has filed a legally sufficient complaint.  
5 *See generally* Fed. R. Civ. P. 3 and commentary. Furthermore, Defendants  
6 are not parties to a suit before being served with process, *see Neals v.*  
7 *Norwood*, 59 F.3d 530, 532 (5th Cir. 1995).

8 As stated above, the Court has deemed the initial Complaint  
9 deficient and directed Plaintiff to amend or voluntarily dismiss. An  
10 amended complaint supercedes the original complaint, *King v. Atiyeh*, 814  
11 F.2d 565, 567 (9th Cir. 1987), and must be complete in itself without  
12 reference to the prior or superceded pleading. Therefore, "[a]ll causes  
13 of action alleged in an original complaint which are not alleged in an  
14 amended complaint are waived." *King*, 814 F.2d at 567 (*citing to London*  
15 *v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.1981)).

16 After review of the proposed amended complaint, which omits four of  
17 the previously named Defendants and attempts to add "Unknown Sinclair",  
18 ECF No. 9, the Court finds that this document is insufficient to cure  
19 the deficiencies of the initial complaint. Accordingly, the Court finds  
20 no basis to grant Plaintiff a temporary restraining order or permanent  
21 injunction, and Plaintiff's motions to that effect are denied.

#### 22 DOCUMENTS FROM NON-PARTY

23 On May 10, 2013, the Court received a letter from another inmate,  
24 referencing Mr. Hinkley's case. This inmate, who is not a party to this  
25 action, asks the Court to "add an additional declaration," regarding his  
26 experiences. A civil action is not an open forum in which any inmate

1 may express his grievances to the Court. Only the *pro se* Plaintiff or  
2 his counsel, should he retain one, may file documents in this action.  
3 Accordingly, the May 10, 2013 letter from inmate Joel M. Zellmer is  
4 hereby stricken. If Mr. Zellmer or any other inmate wishes to file a  
5 separate action, he is free to do so.

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Plaintiff's Motion to Appoint Legal Counsel, **ECF No. 4**, is  
8 **DENIED.**

9 2. Plaintiff's construed Motion to Strike, **ECF No. 8**, is **DENIED**  
10 **AS MOOT.**

11 3. Plaintiff's construed Motions for a Temporary Restraining  
12 Order and Permanent Injunction, **ECF Nos. 5 & 10**, are **DENIED.**

13 4. The May 10, 2013 letter from inmate Joel M. Zellmer, ECF No.  
14 12, is hereby **STRICKEN.** The Clerk's Office is **DIRECTED** to  
15 send a civil rights packet to Mr. Zellmer.

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
17 Order and provide a copy to Plaintiff and to Mr. Zellmer.

18 **DATED** this 18<sup>th</sup> day of June 2013.

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20 s/ Edward F. Shea  
21 EDWARD F. SHEA  
22 Senior United States District Judge  
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